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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,560	05/07/2001	Nichimu Inada	206253US3PC	1157

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EXAMINER

YU, JUSTINE ROMANG

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 11/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/830,560

Applicant(s)

INADA ET AL.

Examiner

Justine R Yu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 39-93 is/are pending in the application.
- 4a) Of the above claim(s) 44-47 and 52-93 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 39-43 and 48-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION*****Election/Restrictions***

1. Applicant's election with traverse of Invention I and species 1 (claims 39-43, and 48-51) in Paper No. 7 is acknowledged. The traversal is on the ground(s) that whether or not the invention of Groups I, II, III, and IV have a different mode of operation is immaterial and has not thing to do with the special technical feature of the claims referred to in PCT Rules 13.2. This is not found persuasive because PCT Rule 13.1 requires that "the international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept." In the instant case, Group I is drawn to a massaging apparatus having a technical feature including a pivotal supporting arm and various position sensors, Group II, drawn to a massaging apparatus including special technical feature of a control element and a memory for storing the position of the therapeutic member, Group II drawn to a massaging apparatus having an air cell and a detecting means for detecting inflation and deflation of the air cell, and Group IV drawn to a massaging apparatus having a detector for detecting a load. Thus, Groups I-IV represents an individual invention. In addition, the special technical features in each of the inventions has different function and operate differently, the special technical features in each Group do not define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art. Accordingly, the restriction requirement is proper.

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each to the

Regarding the species restriction, the claim recites different sensors, which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. Thus, the species restriction requirement is proper.

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The requirement is still deemed proper and is therefore made FINAL.

2. This application contains claims 44-47 and 52-93 drawn to an invention and species nonelected with traverse in Paper No. 7. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

***Information Disclosure Statement***

3. The information disclosure statement filed 8/9/01 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

***Specification***

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

5. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

***Claim Rejections - 35 USC § 112***

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6. Claims 39, 42, 48, and 49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 39, the term “wherein a position of a specific portion of the user with respect to the massaging apparatus is determined from a relation between a vertical position of the supporting arm and a pivotal position of the supporting arm” is indefinite and unclear as how and by what structural element being used to determine the recited relation. Similar to claim 42.

*Claim Rejections - 35 USC § 102*

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

8. Claims 39-42 and 48-51 are rejected under 35 U.S.C. 102(e) as being anticipated by Canto (6,443,917).

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Canto teaches a massaging device having a pair of supporting arms each pivotally supporting a therapeutic member (6, 15) (figures 1, 3, 12, and 15). It is inherent that the position of a specific portion of the user with respect to the massaging apparatus can be determined from a relation between a vertical position of the supporting arm and a pivotal position of the supporting arm such that massaging therapy can be applied to the user.

Regarding claim 41, figure 1 of Canto shows a pivotal position-detecting sensor 17.

Regarding claims 48 and 49, Canto in column 5, lines 59-67, discloses the position of the specific portion of the user can be the shoulder of the user.

### *Claim Rejections - 35 USC § 103*

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Canto in view of Imazaike et al (6,190,339).

Canto lacks a detail description that the sensor is an optical sensor. However, Imazaike teaches an optical sensor including light emitting and light receiving elements (column 16, lines 7-13). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute Canto's position sensor with an optical position sensor as taught by B, since it is a matter of design for art recognized equivalent.

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*Conclusion*

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ostrow (6,009,346), Lipowitz (5,083,552), Guitay (4,729,368), and Otuka et al (4,576,149) are cited to show different position sensors.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justine R Yu whose telephone number is (703)308-2675. The examiner can normally be reached on 8:30am - 6:00Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703)308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

  
Justine R Yu  
Primary Examiner  
Art Unit 3764

JY  
November 21, 2002